



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to the return of a deposit paid for the rental unit? Is the tenant entitled to double the deposit and the filing fee?

Background and Evidence

Both parties agreed that the tenant contacted the landlord in response to her advertisement regarding the availability of the rental unit. On April 10, 2011, the parties met at the landlord's residence which is located on the upper level of the home. The rental unit is below. The tenant was unable to view the rental suite on April 10, 2011, as the landlord had not given the occupant 24 hour notice to enter the suite. The landlord testified that she described the unit and the layout of the rooms, using her residence as a comparable.

Some arrangements regarding dates and storage of the tenant's belongings were discussed. The tenant agreed to rent it but the start date of the tenancy was not finalized as it depended on the move out date of the occupants. The tenant requested a possession date of April 28 while the landlord informed them that the move in was possible sometime before May 08, 2011. She needed to finalize arrangements with the occupant of the rental unit.

The tenant paid a security deposit in the amount of \$2,450.00 on April 10, 2011. There was no written agreement. The tenant stated that the deposit was paid subject to his approval after viewing the suite. The landlord denied that there were any subjects. She stated that the tenant seemed very eager to rent the unit. The landlord stated that she had other prospective tenants that she turned down after she received the security deposit.

The landlord went away on vacation and upon her return; the tenant viewed the suite on April 21, 2011. The next morning the tenant called the landlord to inform her that he was unable to rent the suite. He stated that the reasons for his decision were that the landlord had provided misinformation regarding the size of the unit, the presence of a gourmet kitchen and the overall condition of the suite. He also stated that the occupants at that time had cats and he was allergic to cats.

The landlord re advertised the unit and found a tenant for June 01, 2011. The then occupant of the unit moved out on May 08, 2011 and paid rent up to this date. The tenant has applied for the return of double the security deposit.

Analysis

The definition of a tenancy agreement as laid out in section 1 of the *Residential Tenancy Act* states that a tenancy agreement means *an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.*

Even though there was no written tenancy agreement, the tenant paid a security deposit and based on this payment and pursuant to the definition of a tenancy agreement, I find that the landlord and tenant had entered into a binding tenancy agreement.

Section 16 of the *Residential Tenancy Act*, states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to the rent for that month.

The tenant made this application on May 13, 2011. The earliest the tenant could end the tenancy was May 31, 2011. The tenant has claimed the return of double the security deposit. Pursuant to section 38, the landlord has 15 days after the end of tenancy to return the security deposit. However, since the tenant had already applied for its return prior to the earliest date the tenancy could end, the landlord did not have the opportunity to make application. Accordingly, the tenant, if entitled to the return of all or a portion of the deposit, is not entitled to the return of double the amount.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy.

The landlord made efforts to mitigate her losses by advertising the availability of the suite, and was successful in finding a tenant for June 01, 2011. The occupant of the unit, moved out on May 08, 2011 and the landlord received rent for this period. Therefore the landlord suffered a loss of income for the period of May 09 to May 31, 2011.

Based upon the sworn testimony of both parties, I find that the landlord suffered a loss of income in the amount of \$1,817.69 which is the prorated rent for the period that the rental unit remained vacant. Therefore I find that the tenant is responsible for this loss of income and must pay the landlord this amount. The landlord is holding a security deposit of \$2,450.00 and therefore I find that the tenant is entitled to the balance of the security deposit in the amount of 632.31. The tenant has proven a portion of his case and therefore I find that the tenant is also entitled to the filing fee of \$50.00.

Overall the tenant has established a claim of \$682.31. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain a portion of the security deposit and must return \$682.31 to the tenant .I grant the tenant a monetary order in the amount of **\$682.31**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 01, 2011.

Residential Tenancy Branch